



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 162

[Docket No. USCG-2011-1086]

RIN 1625-AB84

Inland Waterways Navigation Regulations

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: This rule redefines the geographical points described in our regulations, which demarcate an area of the Detroit River in which certain vessels are restricted to speeds not greater than 12 statute miles per hour.

DATES: This rule will be effective [INSERT 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG-2011-1086]. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box, and click "Search." You may visit the Docket Management Facility, Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday

through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail LT Adrian Palomeque, Prevention Department, Sector Detroit, Coast Guard; telephone (313)568-9508, e-mail Adrian.F.Palomeque@uscg.mil. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking

A. Regulatory History and Information

On May 8, 2012, we published in the Federal Register a notice of proposed rulemaking (NPMR) entitled Inland Waterways Navigation Regulations (77 FR 27007). We received 1 comment. Specifically, Lake Carriers' Association (LCA) submitted a letter on May 15, 2012 in which LCA offered its full support for this rulemaking as proposed in the NPRM. No other comments were received. No public meeting was requested, and none was held.

B. Basis and Purpose

As discussed in the aforesaid NPRM, representatives from LCA, the Lakes Pilots Association, the International Shipmasters Association, and the Canadian Shipowners Association previously made a request of the Coast Guard regarding 33 CFR Part 162. Particularly, these groups requested that the Coast Guard amend, via federal rulemaking, 33 CFR 162.138(a)(1)(ii), which requires vessels on the Detroit River north of the Detroit River Light to operate at no more than 12 statute miles per hour. In response to that request, the Coast Guard's Ninth District Commander, in consultation with the Captain of the Port, Sector Detroit, Windsor Port Authority, Transport Canada, and the Canadian Coast Guard, assessed the necessity and utility of the aforementioned regulatory provision and determined that the southern point of the restricted speed area in 33 CFR 162.138(a)(1)(ii) should be relocated to a point approximately 2.5 statute miles to the north at the D33 stationary light. The reasoning for the Ninth District Commander's decision is discussed in the following paragraph.

The speed restriction in 33 CFR 162.138(a)(1)(ii) requires vessels on the Detroit River north of the Detroit

River Light to operate at no more than 12 statute miles per hour. This restriction serves two purposes. First, it is intended to prevent collisions and groundings. (See 33 CFR 162.130(a)). Second, it is intended to limit wake damage to vessels and shore structures (See 60 FR 35701-01).

Because the Detroit River Light is several miles into Lake Erie and because the channel between the Detroit River Light and the D33 stationary light is roughly twelve-hundred feet wide, the Ninth District Commander has determined that limiting speed south of the D33 stationary light is not necessary to prevent wake damage or to prevent collisions and groundings. Thus, 33 CFR 162.138(a)(1)(ii), as currently written, serves as an unnecessary restriction on vessel operations. Moreover, this unnecessary restriction is exacerbated by the fact that upbound vessels must decelerate well in advance of the Detroit River Light in order to attain the maximum speed at the light itself.

Pursuant to the authority contained in the Ports and Waterways Safety Act, (33 U.S.C. 1221 et. seq.), as delegated to the Commandant of the Coast Guard via Department of Homeland Security Delegation No. 0170.1 and to Coast Guard District Commanders pursuant to 33 CFR 1.05-1(e)(1)(vii), the Ninth District Commander is amending 33 CFR 162.138(a)(1)(ii) to alleviate unnecessary restrictions

on commercial vessel operations.

c. Discussion of Comments, Changes, and the Final Rule

As mentioned above, only one comment was received in response to the NPRM published on May 8, 2012. In that comment, LCA offered its full support for the proposed rulemaking.

This Final Rule is identical to the rule proposed in that NPRM. As stated in the NPRM, because 33 CFR 162.138, as currently written, unnecessarily restricts commercial vessel operations, the Ninth District Commander is amending 33 CFR 162.138 to reduce the size of the restricted speed area currently delineated in 33 CFR 162.138 (a)(1)(ii). Particularly, this rule relocates the southern point of the restricted speed area from its current location at the Detroit River Light to a new location near the D33 stationary light.

D. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning

and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this proposed rule is not a significant regulatory action because relocating the southern point of the restricted speed area delineated in 33 CFR 162.138 (a)(1)(ii) will lessen navigation restrictions on the public and on private industry. Thus, we anticipate that it will not adversely affect the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are

independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard received no comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which might be small entities: the owners and operators of vessels intending to transit between the Detroit River Light and the D33 stationary. However, the relocation of the southern point of the restricted speed area delineated in 33 CFR 162.138 (a)(1)(ii) will not have a significant economic impact on a substantial number of small entities because it will lessen navigation restrictions on the public and private industry.

3. Assistance for Small Entities

In keeping with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have

questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule does not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution

of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

7. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

8. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform,

to minimize litigation, eliminate ambiguity, and reduce burden.

9. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

10. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

11. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

12. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

13. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves amendments to navigation regulations and thus, is categorically excluded under paragraph 34(i) of the Commandant Instruction. A Categorical Exclusion Determination (CED) and a preliminary environmental analysis checklist are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects 33 CFR Part 162

Navigation (water), Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 162 as follows:

PART 162 - INLAND WATERWAYS NAVIGATION REGULATIONS

1. The authority citation for part 162 continues to read as follows:

Authority: 33 U.S.C. 1231; Department of Homeland
Security Delegation No. 0170.1.

§ 162.138 [Amended]

2. In § 162.138(a)(1)(ii), remove the words "Detroit
River Light" and in their place add the words "D33
stationary light in the Detroit River entrance".

Dated: October 1, 2012

M. N. PARKS
Rear Admiral, U.S. Coast Guard
Commander, Ninth Coast Guard District

[FR Doc. 2012-25141 Filed 10/12/2012 at 8:45 am;
Publication Date: 10/15/2012]